

House File 149 - Introduced

HOUSE FILE 149

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A BILL FOR

1 An Act requiring minimum sick and safe time for employees,
2 providing a penalty, and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **91F.1 Title.**

2 This chapter shall be known and may be cited as the "*Healthy*
3 *and Safe Families and Workplaces Act*".

4 Sec. 2. NEW SECTION. **91F.2 Public policy.**

5 It is the public policy of this state to protect public
6 health and safety and to promote the general welfare of its
7 citizens by supporting employers in their efforts to encourage
8 employees to work when they are healthy and by protecting
9 the basic rights of workers who safeguard public health by
10 remaining home when they are ill.

11 Sec. 3. NEW SECTION. **91F.3 Definitions.**

12 1. "*Commissioner*" means the labor commissioner appointed
13 pursuant to section 91.2.

14 2. "*Domestic abuse assault*" means as defined in section
15 708.2A.

16 3. "*Employee*" means as defined in the federal Fair Labor
17 Standards Act of 1938, 29 U.S.C. § 201 et seq., as amended.

18 4. "*Employer*" means as defined in the federal Fair Labor
19 Standards Act of 1938, 29 U.S.C. § 201 et seq., as amended.

20 5. "*Family member*" means any of the following:

21 a. An employee's spouse or domestic partner.

22 b. A child or foster child; stepchild; legal ward; a child
23 of a domestic partner; or a child to whom the employee stands
24 in loco parentis.

25 c. A parent or foster parent; stepparent; legal guardian;
26 or a person who stood in loco parentis to the employee when the
27 employee was a minor child.

28 d. A grandparent or spouse or domestic partner of a
29 grandparent.

30 e. A grandchild.

31 f. A sibling or foster sibling; stepsibling; or spouse or
32 domestic partner of a sibling, foster sibling, or stepsibling.

33 g. Any other individual related to the employee by blood
34 or affinity whose close association with the employee is the
35 equivalent of a familial relationship.

1 6. "*Health care professional*" means as defined in section
2 135.157.

3 7. "*Retaliatory personnel action*" means the discharge,
4 suspension, or demotion of, or any other adverse action taken
5 by an employer against, an employee.

6 8. "*Sexual abuse*" means as defined in section 709.1.

7 9. "*Sick and safe time*" means time, whether paid or unpaid,
8 that is earned and is provided by an employer to an employee
9 for the purposes described in section 91F.5.

10 10. "*Stalking*" means as described in section 708.11.

11 Sec. 4. NEW SECTION. **91F.4 Accrual — sick and safe time.**

12 1. An employee who works for compensation for an employer
13 shall have the right to accrue and use sick and safe time as
14 provided in this chapter.

15 2. *a.* An employee shall accrue a minimum of five and
16 fifty-four hundredths hours of sick and safe time for every
17 forty hours worked.

18 *b.* An employee shall not accrue more than one hundred
19 forty-four hours of sick and safe time in a calendar year,
20 unless the employer selects a higher limit.

21 3. Employees who are exempt from overtime requirements
22 under section 13(a)(1) of the federal Fair Labor Standards Act
23 of 1938, 29 U.S.C. § 213(a)(1), are deemed to work forty hours
24 in each work week for purposes of sick and safe time accrual
25 unless their normal work week is less than forty hours, in
26 which case sick and safe time accrues based upon that normal
27 work week.

28 4. Sick and safe time as provided in this section shall
29 begin to accrue upon the commencement of employment for new
30 employees and for existing employees beginning July 1, 2013.

31 5. *a.* A new employee may use accrued sick and safe time
32 beginning on the sixtieth calendar day following commencement
33 of the employee's employment. On and after the sixtieth
34 calendar day of employment, an employee may use accrued sick
35 and safe time and accruing sick and safe time as it accrues.

1 *b.* Existing employees may use sick and safe time as it
2 accrues pursuant to this chapter.

3 6. Accrued sick and safe time shall be carried over to
4 the following calendar year subject to the limit described in
5 subsection 2, paragraph "*b*".

6 7. An employer with a leave policy who makes available an
7 amount of leave sufficient to meet the accrual requirements of
8 this section that may be used for the same purposes and under
9 the same conditions as sick and safe time under this chapter is
10 not required to provide additional sick and safe time.

11 8. Nothing in this section shall be construed as requiring
12 financial or other reimbursement to an employee from an
13 employer upon the employee's termination, resignation,
14 retirement, or other separation from employment for accrued
15 sick and safe time that has not been used.

16 9. *a.* If an employee is transferred to a separate division,
17 entity, or location, but remains employed by the same employer,
18 the employee is entitled to all sick and safe time previously
19 accrued; is entitled to immediately use all accrued sick and
20 safe time as provided in this chapter; and shall continue to
21 accrue sick and safe time at the same rate or higher as before
22 the transfer.

23 *b.* When there is a separation from employment and the
24 employee is rehired within three months of the separation
25 by the same employer, previously accrued sick and safe time
26 that had not been used prior to the separation shall be
27 reinstated. The employee may use such accrued sick and safe
28 time immediately upon rehire, and sick and safe time shall
29 begin to accrue immediately upon rehire.

30 10. At the employer's discretion, the employer may advance
31 sick and safe time to an employee ahead of accrual of such time
32 by the employee.

33 Sec. 5. NEW SECTION. 91F.5 Use of sick and safe time —
34 purposes — procedures.

35 1. Sick and safe time shall be provided to an employee by an

1 employer for the following purposes:

2 *a.* An employee's mental or physical illness, injury, or
3 health condition; an employee's need for medical diagnosis,
4 care, or treatment of a mental or physical illness, injury, or
5 health condition; an employee's need for preventive medical
6 care.

7 *b.* An employee's need to care for a family member with a
8 mental or physical illness, injury, or health condition; an
9 employee's need to care for a family member who needs medical
10 diagnosis, care, or treatment of a mental or physical illness,
11 injury, or health condition; an employee's need to care for a
12 family member who needs preventive medical care.

13 *c.* (1) Closure of the employee's place of work by order of
14 a public official due to a public health emergency.

15 (2) An employee's need to care for a family member whose
16 school or place of care has been closed by order of a public
17 official due to a public health emergency.

18 (3) An employee's need to care for a family member when
19 public health authorities or a health care professional has
20 determined that the family member's presence in the community
21 jeopardizes the health of others because of the family member's
22 exposure to communicable disease, whether or not the family
23 member has actually contracted the communicable disease.

24 *d.* An employee's need to be absent from work due to domestic
25 abuse assault, sexual abuse, or stalking, provided the leave
26 from work is to do one or more of the following:

27 (1) Seek medical attention for the employee or family member
28 to recover from physical or psychological injury or disability
29 caused by domestic abuse assault or sexual abuse.

30 (2) Obtain services from a victim services organization.

31 (3) Obtain psychological or other counseling.

32 (4) Seek relocation due to the domestic abuse assault,
33 sexual abuse, or stalking.

34 (5) Take legal action, including preparing for or
35 participating in any civil or criminal legal proceeding related

1 to or resulting from the domestic abuse assault, sexual abuse,
2 or stalking.

3 2. Sick and safe time shall be allowed upon the oral request
4 of an employee. When possible, the employee shall include the
5 expected duration of the employee's absence.

6 3. When the use of sick and safe time is foreseeable, the
7 employee shall make a good faith effort to provide notice
8 of the need for such time to the employer in advance of the
9 use of the sick and safe time, and the employee shall make a
10 reasonable effort to schedule the use of sick and safe time in
11 a manner that does not unduly disrupt the operations of the
12 employer.

13 4. Accrued sick and safe time may be used in the smaller of
14 hourly increments or the smallest increment that the employer's
15 payroll system uses to account for absences or use of other
16 time.

17 5. *a.* For sick and safe time for more than three
18 consecutive days, an employer may require reasonable
19 documentation that the sick and safe time is for the purposes
20 described in subsection 1.

21 (1) Documentation signed by a health care professional
22 indicating that sick time is necessary shall be considered
23 reasonable documentation.

24 (2) A police report indicating that the employee was a
25 victim of domestic abuse assault, sexual abuse, or stalking; a
26 court order; or a signed statement from a victim and witness
27 advocate affirming that the employee is involved in legal
28 action related to domestic abuse assault, sexual abuse, or
29 stalking shall be considered reasonable documentation.

30 *b.* An employer may not require that the documentation
31 explain the nature of the medical reason or the details of the
32 domestic abuse assault, sexual abuse, or stalking.

33 *c.* (1) If an employer chooses to require documentation
34 for use of sick time and the employee does not have health
35 insurance, the employer is responsible for paying all

1 out-of-pocket expenses the employee incurs in obtaining the
2 documentation.

3 (2) If the employee does have health insurance, the
4 employer is responsible for paying any costs charged to the
5 employee by the health care provider for providing the specific
6 documentation required by the employer.

7 6. An employer shall not require as a condition of allowing
8 sick and safe time under this chapter that the employee search
9 for or find a replacement worker to cover the hours during
10 which the employee will be using sick and safe time.

11 Sec. 6. NEW SECTION. 91F.6 Exercise of rights —
12 retaliation prohibited.

13 1. An employer or any other person shall not interfere with,
14 restrain, or deny the exercise of, or the attempt to exercise,
15 any right protected under this chapter.

16 2. An employer shall not take retaliatory personnel action
17 or discriminate against an employee because the employee has
18 exercised rights protected under this chapter. Such rights
19 include but are not limited to the following:

20 a. The right to use sick and safe time pursuant to this
21 chapter.

22 b. The right to file a complaint or inform any person about
23 any employer's alleged violation of this chapter.

24 c. The right to cooperate with the commissioner in any
25 investigation of alleged violations of this chapter.

26 d. The right to inform any person of the person's potential
27 rights under this chapter.

28 3. An employer's absence control policy shall not count
29 sick and safe time taken pursuant to this chapter as an absence
30 that may lead to or result in discipline, discharge, demotion,
31 suspension, or any other adverse action.

32 4. The protections of this section shall apply to any person
33 who mistakenly but in good faith alleges violations of this
34 section.

35 5. There is a rebuttable presumption of retaliation under

1 this section whenever an employer takes adverse action against
2 an employee within ninety days of when that employee has done
3 any of the following:

4 *a.* Filed a complaint with the commissioner or a court
5 alleging a violation of any provision of this chapter.

6 *b.* Informed any person about an employer's alleged violation
7 of this chapter.

8 *c.* Cooperated with the commissioner or others in an
9 investigation or prosecution of any alleged violation of this
10 chapter.

11 *d.* Opposed any policy, practice, or act that is unlawful
12 under this chapter.

13 *e.* Informed any person of the person's potential rights
14 under this chapter.

15 Sec. 7. NEW SECTION. 91F.7 Notice and posting.

16 1. An employer shall give notice to employees of the
17 following:

18 *a.* Employees are entitled to sick and safe time.

19 *b.* The accrual amounts of sick and safe time.

20 *c.* The terms of use of sick and safe time guaranteed under
21 this chapter.

22 *d.* The prohibition against retaliation against employees who
23 request or use sick and safe time.

24 *e.* Each employee has the right to file a complaint or
25 bring a civil action if sick and safe time as required by
26 this chapter is denied by the employer, or the employee is
27 retaliated against for requesting or taking sick and safe time.

28 2. *a.* An employer may comply with this section by supplying
29 each employee with a notice that contains all the information
30 required in subsection 1.

31 *b.* An employer may comply with this section by displaying a
32 poster and other informational materials in a conspicuous and
33 accessible place in each establishment where such employees
34 are employed which contains all the information required in
35 subsection 1.

1 3. An employer who willfully violates the notice and posting
2 requirements of this section shall be subject to a civil
3 penalty in an amount not to exceed one hundred dollars for each
4 separate offense.

5 Sec. 8. NEW SECTION. **91F.8 Damages recoverable by an**
6 **employee.**

7 In an action by an employee against the employee's employer
8 or former employer for an alleged violation of this chapter,
9 when it has been shown that the employer has intentionally
10 failed to provide sick and safe time to the employee in
11 violation of this chapter or failed to allow the employee to
12 use accrued sick and safe time as provided by this chapter,
13 the employer shall be liable to the employee for the monetary
14 value of the owed sick and safe time, plus liquidated damages
15 for failure to allow the employee to use accrued sick and safe
16 time, court costs, and any attorney fees incurred in the civil
17 action.

18 Sec. 9. NEW SECTION. **91F.9 Employer records.**

19 1. An employer shall retain records documenting hours
20 worked by employees and sick and safe time taken by employees,
21 for a period of five years.

22 2. An employer shall allow the commissioner access to such
23 records, with notice and at a mutually agreeable time, to
24 monitor compliance with the requirements of this chapter.

25 3. If an issue arises as to an employee's entitlement to
26 sick and safe time under this chapter and the employer does not
27 maintain or retain adequate records according to this section
28 or does not allow the commissioner access to such records, the
29 commissioner or other investigating authority shall presume
30 that the employer has violated this chapter, absent clear and
31 convincing evidence otherwise.

32 Sec. 10. NEW SECTION. **91F.10 Enforcement.**

33 1. Upon the written complaint of the employee involved,
34 the commissioner may determine whether to investigate if
35 an employer has violated any provision of this chapter.

1 The commissioner shall keep confidential, to the extent
2 permitted by applicable law, the name of and other identifying
3 information about the employee reporting the alleged violation.
4 However, the commissioner, with the authorization of the
5 complaining employee, may disclose the employee's name and
6 other information as necessary to enforce this chapter or for
7 other appropriate purposes.

8 2. If for any reason the commissioner makes a determination
9 not to investigate, the commissioner shall notify the
10 complaining employee within fourteen days of receipt of
11 the complaint. The commissioner shall otherwise notify
12 the employee of the determination to investigate within
13 a reasonable time. If it is determined that there is an
14 enforceable claim, the commissioner, with the consent of the
15 complaining employee and with the assistance of the office
16 of the attorney general if the commissioner requests such
17 assistance, shall, unless a settlement is reached, commence a
18 civil action in any court of competent jurisdiction to recover
19 for the benefit of any employee any sick and safe time claims
20 that have been assigned to the commissioner for recovery.
21 The commissioner may also request reasonable and necessary
22 attorney fees. With the consent of the assigning employee, the
23 commissioner may also settle a claim on behalf of the assigning
24 employee.

25 3. Proceedings under this section that precede commencement
26 of a civil action shall be conducted informally without any
27 party having a right to be heard before the commissioner. The
28 commissioner may join various assignments in one claim for the
29 purpose of settling or litigating the assignees' claims.

30 4. The provisions of subsections 1 and 2 shall not be
31 construed to prevent an employee from settling or bringing an
32 action for damages under section 91F.8 if the employee has not
33 assigned the claim under subsection 2.

34 5. Any recovery of attorney fees, in the case of actions
35 brought under this section by the commissioner, shall be

1 remitted by the commissioner to the treasurer of state for
2 deposit in the general fund of the state. The commissioner is
3 not required to pay any filing fee or other court costs.

4 Sec. 11. NEW SECTION. 91F.11 **Confidentiality and**
5 **nondisclosure.**

6 1. An employer may not require disclosure of details
7 relating to domestic abuse assault, sexual abuse, or stalking,
8 or of the details of an employee's medical condition or that of
9 a family member as a condition of allowing sick and safe time
10 under this chapter.

11 2. If an employer possesses health information or
12 information pertaining to domestic abuse assault, sexual abuse,
13 or stalking about an employee or an employee's family member,
14 such information shall be treated as confidential and not
15 disclosed except to the affected employee or with the written
16 permission of the affected employee.

17 Sec. 12. NEW SECTION. 91F.12 **Other sick and safe time**
18 **policies — legal requirements.**

19 1. Nothing in this chapter shall be construed to discourage
20 or prohibit an employer from the adoption or retention of a
21 sick and safe time policy that is more generous than that
22 provided in this chapter.

23 2. Nothing in this chapter shall be construed as diminishing
24 the obligation of an employer to comply with any contract,
25 collective bargaining agreement, employment benefit plan, or
26 other agreement that provides more generous sick and safe time
27 to an employee than required in this chapter.

28 3. Nothing in this chapter shall be construed as diminishing
29 the rights of public employees regarding sick and safe time or
30 the use of sick and safe time as provided by state law.

31 4. This chapter provides minimum requirements pertaining
32 to sick and safe time and shall not be construed to preempt,
33 limit, or otherwise affect the applicability of any other law,
34 regulation, requirement, policy, or standard that provides for
35 greater accrual or use by employees of sick and safe time or

1 that extends other protections to employees.

2 Sec. 13. NEW SECTION. 91F.13 Paid sick and safe time —
3 posting.

4 1. For the purposes of this section, "*paid sick and safe*
5 *time*" means time that is compensated at the same hourly rate
6 and with the same benefits, including health care benefits, as
7 the employee normally earns during hours worked and is provided
8 by an employer to an employee for the purposes described in
9 section 91F.5, but in no instance shall the hourly wage be less
10 than that provided in section 91D.1.

11 2. Employers in this state are encouraged to offer paid
12 sick and safe time to their employees. The department of
13 public health shall create a poster and other informational
14 materials that may be used by an employer for public display if
15 the employer provides paid sick and safe time to all employees
16 in each establishment where the poster and other informational
17 materials are displayed. The poster and other informational
18 materials shall contain all the information required in section
19 91F.7, subsection 1.

20 3. An employer may apply to the department of public health
21 for authorization to display or distribute the poster and
22 other informational materials created by the department. The
23 department shall verify that an applicant offers paid sick and
24 safe time to all employees in each establishment where the
25 poster and other informational materials will be displayed
26 and is in compliance with the requirements of this chapter.
27 The department shall electronically transmit the poster and
28 other informational materials to any verified applicant. The
29 department shall consult with the commissioner as necessary to
30 carry out the requirements of this section.

31 Sec. 14. Section 91.4, subsection 2, Code 2013, is amended
32 to read as follows:

33 2. The director of the department of workforce development,
34 in consultation with the labor commissioner, shall, at the
35 time provided by law, make an annual report to the governor

1 setting forth in appropriate form the business and expense of
 2 the division of labor services for the preceding year, the
 3 number of remedial actions taken under chapter 89A, the number
 4 of disputes or violations processed by the division and the
 5 disposition of the disputes or violations, and other matters
 6 pertaining to the division which are of public interest,
 7 together with recommendations for change or amendment of the
 8 laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,
 9 90A, 91A, 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68,
 10 and the recommendations, if any, shall be transmitted by the
 11 governor to the first general assembly in session after the
 12 report is filed.

13 Sec. 15. Section 135.11, Code 2013, is amended by adding the
 14 following new subsection:

15 NEW SUBSECTION. 32. In consultation with the labor
 16 commissioner, carry out duties relating to the creation and
 17 transmission of posters and other informational materials
 18 pursuant to section 91F.13.

19 Sec. 16. APPLICABILITY. Notwithstanding the section of
 20 this Act relating to applicability of this Act on or after
 21 the effective date of this Act, this Act does not apply to
 22 employees under a contract or collective bargaining agreement
 23 that was in effect on or before the effective date of this Act.

24 Sec. 17. APPLICABILITY. This Act applies to all existing
 25 employees on and after the effective date of this Act and to
 26 all new employees hired on or after that date.

27 EXPLANATION

28 This bill, entitled the "Healthy and Safe Families and
 29 Workplace Act", provides minimum sick and safe time, whether
 30 paid or unpaid, for all employees working part-time and
 31 full-time in the state in new Code chapter 91F. The bill
 32 declares that it is the public policy of the state to protect
 33 public health and safety and to promote the general welfare
 34 of its citizens by supporting employers in their efforts to
 35 encourage employees to work when they are healthy and by

1 protecting the basic rights of workers who safeguard public
2 health by remaining home when they are ill.

3 The bill defines several terms including "family member" and
4 "sick and safe time".

5 The bill provides that all employees shall have the right to
6 accrue and use sick and safe time. The formula for accruing
7 sick and safe time is contained in the bill, and there are
8 limits for the amount of sick and safe time an employee may
9 accrue per year, unless the employer sets a higher limit.

10 The formula for accruing sick and safe time and the
11 limitations and exceptions are provided in new Code section
12 91F.4. Sick and safe time shall begin to accrue for new
13 employees on the first day of work and for existing employees
14 on July 1, 2013. New employees may use accrued sick and safe
15 time starting the 60th day of employment. Existing employees
16 may use sick and safe time as it accrues. Sick and safe time
17 shall carry over each year, but an employee may not use more
18 than 144 hours of sick and safe time per year.

19 An employer who provides a leave policy that meets the
20 minimum accrual requirements and the same minimum uses and
21 conditions is deemed to be in compliance with the bill. The
22 bill does not require employees to be reimbursed for unused
23 sick and safe time upon separation from employment. However,
24 if an employee is moved or transferred within the company,
25 the employee shall retain all accrued sick and safe time and
26 may use such time immediately. If there is an employment
27 separation, but an employee is rehired within three months, all
28 accrued sick and safe time shall be reinstated upon rehire and
29 be available for immediate use. An employer has the discretion
30 to advance sick and safe time to an employee.

31 The bill provides specific reasons for which employees may
32 use the sick and safe time in new Code section 91F.5. An
33 employee shall give reasonable notice to an employer when
34 use of sick and safe time is foreseeable. When an employee
35 uses more than three consecutive days of sick and safe time,

1 an employer may require reasonable documentation that the
2 time used is covered by the reasons the time may be taken as
3 provided in the bill. An employer who requests documentation
4 for use of sick time by an employee without health insurance
5 is responsible for paying all expenses related to acquiring
6 the documentation. For an employee with health insurance, the
7 employer is responsible for paying any costs charged to the
8 employee to receive the documentation. An employer shall not
9 require an employee to find a replacement worker in order to
10 use sick and safe time.

11 An employee's rights under the bill, including the right
12 to use sick and safe time and to file a complaint against
13 an employer, and the prohibitions against an employer's
14 retaliation against an employee exercising those rights, are
15 explained in new Code section 91F.6.

16 Employers are required to give employees notice of their
17 rights to sick and safe time as described in new Code section
18 91F.7, either by supplying each employee with a notice or
19 by posting such notice in an accessible and obvious place
20 where employees work. Violations of the notice and posting
21 requirements may result in a civil penalty of not more than
22 \$100 for each offense.

23 An employee may recover the monetary value of owed sick
24 and safe time plus liquidated damages for the wrongful denial
25 of use of accrued sick and safe time if an employer is shown
26 to have intentionally violated the bill pursuant to new Code
27 section 91F.8.

28 An employer must retain records documenting hours worked by
29 each employee and the amount of sick and safe time taken by the
30 employees for five years. The labor commissioner shall have
31 reasonable access to these records. If a question arises about
32 an employee's right to sick and safe time and an employer does
33 not have adequate records or does not allow the commissioner to
34 examine the employer's records, the commissioner shall presume
35 that the employer has violated the bill.

1 Pursuant to new Code section 91F.10, an employee may submit
2 a written complaint to the commissioner, who will determine
3 whether to investigate the claim that an employer has violated
4 any provision of new Code chapter 91F. If the commissioner
5 decides to investigate, the commissioner shall commence a civil
6 action against the employer.

7 An employer may not require an employee to disclose details
8 relating to domestic abuse assault, sexual abuse, stalking,
9 or a medical condition as a condition of using sick and safe
10 time. An employer who has such information shall treat the
11 information as confidential and not disclose it without written
12 consent of the affected employee, according to new Code section
13 91F.11.

14 The bill provides that the new Code chapter does not prohibit
15 an employer from providing a more generous sick and safe time
16 policy, does not diminish an employer's previous contractual
17 obligations for more generous sick and safe time, and does not
18 diminish public employees' rights to sick and safe time as
19 provided by law.

20 The bill encourages employers to offer paid sick and safe
21 time as defined in the bill to their employees. "Paid sick and
22 safe time" is defined to mean time that is compensated at the
23 same hourly rate and with the same benefits, including health
24 care benefits, as the employee normally earns during hours
25 worked.

26 The department of public health, in consultation
27 with the commissioner, is to create a poster and other
28 informational materials which an employer may use for public
29 display if the employer provides sick and safe time to all
30 employees in each establishment where the poster and other
31 informational materials are to be displayed. The poster and
32 other informational materials must comply with the notice
33 requirements for sick and safe time provided in the bill.
34 The department is to make the poster and other informational
35 materials available to an employer upon verification of

1 compliance with the bill.

2 The bill applies to all existing employees on and after July
3 1, 2013, and to all new hires on or after that date, but does
4 not apply to employees under existing contracts or collective
5 bargaining agreements.